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EXAMINER

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3721

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/826,293
Filing Date: April 19, 2004
Appellant(s): HADAR, NIR

MAILED
APR 26 2007
Group 3700

Mark M. Friedman
For Appellant

EXAMINER'S ANSWER

Art Unit: 3721

This is in response to the appeal brief filed 02/06/2007 from the Office action mailed 07/06/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 5,938,059	LUBURIC	8-1999
US 4,917,255	FOY et al.	4-1990

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 14, 15, 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over LUBURIC (US 5,938,059) and FOY et al. (US 4,917,255).

- With respect to claims 14 and 27, LUBURIC disclose a method for using a collapsible container (10) disclosed in the reference to FOY et al. including the steps of: providing a collapsible container (10); deploying the container in a crate configuration (Fig. 1); loading the container in the crate configuration with goods at a loading station; transporting the loaded container to an unloading location; unloading the goods from the container; and deploying the empty container in a collapsible configuration (Fig. 2). See column 1, lines 23-34. The FOY's collapsible container (10) comprises: a base (12) having an upper surface (of rigid portion 28) and base sides (14), four side walls (16, 18, 20, 22), four openings (44) defining a pair of elongated channels for receiving tines of a forklift mechanism; wherein the upper surface and the base sides (14) define a central recess of the container, and a major part of the recess lies between the outermost distance of the pair of elongated channels. The collapsible container (10) of FOY can be deployed in a crate configuration (Fig. 1) and a knock-down configuration (Fig. 14), wherein the side walls are received substantially within the central recess in the knock-down configuration (Fig. 4). The method of LUBURIC using the collapsible container (10) of FOY meets all of appellant's claimed subject matter but lacks the specific teaching of the goods being produce. However, it is

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well known to transport produce in crate from a farm to a processing plant or directly to the market; for example, the reference to Box (US 4,044,910) discloses a method for transporting produce in collapsible crate. Therefore, it would have been obvious to a skilled person in the art, at the time of the invention, to have applied the method of LUBURIC in transporting produce so that the collapsible can be utilized many times in transporting produce between the farm and the market or processing plant.

- With respect to claim 15, the collapsible container of FOY includes straps (42) cooperating with upper edges of the wall (16, 18, 20, 22) for facilitating stacking in the crate configuration (col. 4, lines 44-46), and cooperating with upper edges of base sides (14) for facilitating stacking in the knock-down configuration (Fig. 12); therefore, the claimed further steps of stacking the container in the crate configuration and stacking the container in the knock-down configuration are obvious steps in the method of LUBURIC because the collapsible container (10) of FOY is designed to be stacked in both configurations in order to save floor space.
- With respect to claim 16, the length and width of the collapsible container of FOY are neither expressly disclosed to be substantially unequal; therefore, they are considered to be substantially equal.
- With respect to claim 17, the respective opposite walls (16/18 or 20/22) of the collapsible container (10) of FOY are interchangeable.

- With respect to claim 18, LUBURIC discloses that the collapsible container (10) of FOY is primarily formed from plastic or any suitable material (col. 1. lines 24-39).
- With respect to claim 24, the base (12) of the FOY's container includes the base surface (28) and base sides (14) forming a closed end central recess.
- With respect to claim 25, the length of each of the walls (16, 18, 20, 22) is no greater than a length of a respective base side. See FIGS. 12-14 in the reference to FOY.
- With respect to claim 26, the walls (16, 18, 20, 22) of the collapsible container (10) of FOY are implemented with attachment features (68 & 80) for locking the walls (16, 18, 20, 22) from relative movement with respect to each others (col. 5, lines 51-59).

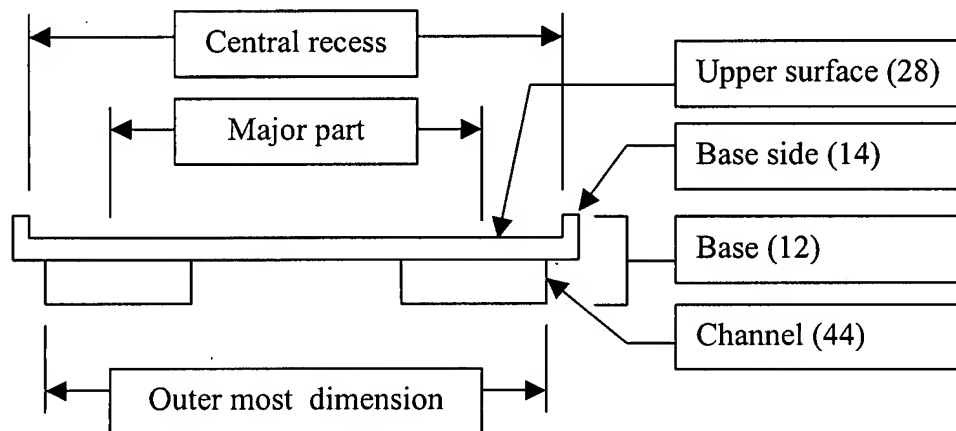
(10) Response to Argument

Prior to responding to appellant's argument, it is agreed that the issues in question in this case are primarily linguistic issues as stated in the brief on page 7, first paragraph; specifically, whether the term "between" has been reasonably applied to read on the claim language of "a major part of said recess lies between said elongated channels" recited in claim 14, or "a major part of said recess lies between said forklift tine engagement regions" recited in claim 27.

As stated in the rejection of claims 14 and 27 above, the FOY's collapsible container (10) comprises: a base (12) having an upper surface (of rigid portion 28) and base sides (14), four side walls (16, 18, 20, 22), four openings (44) defining a pair of elongated channels for receiving

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tines of a forklift mechanism; wherein the upper surface and the base sides (14) define a central recess of the container, and a major part of the recess lies between the outermost distance of the pair of elongated channels. The board is respectfully directed to the diagrammatic illustration below for clarity:



It is clear from the diagrammatic illustration above that the major part of the recess lies between the elongated channels even though a portion of the major part of the recess does overlap a portion of the elongated channels.

Furthermore, Merriam Webster's Collegiate Dictionary, tenth edition, defines the term "between" to have other meanings such as: "in common to" or "serving to connect or unite in a relationship" in addition to "in time, space, or intervals that separates." All of which are suitably applied in this case.

Thus, the reference to FOY does disclose a collapsible container (10) having a central recess, wherein a major part of the recess lies between the elongated channels, which satisfies the claimed structural limitation of "a major part of said recess lies between ..." recited in claims 14 and 27.

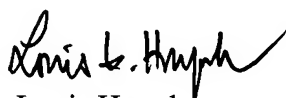
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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Louis Huynh
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AU-3721

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